



Washington State Department of
Labor & Industries

Domestic Workers Work Group Session

June 16, 2022



Agenda

- Welcome and update – Maggie Leland
- Recommendations
- Retaliation
- Definitions
- Session Recap

Legislative direction



2021-23 biennial budget created work group to:

- Investigate how to make it easier for employers to provide workers' comp coverage for domestic workers.
- Recommend legislative, regulatory or other changes.
- Explore possible role of nonprofit organizations that assist and refer domestic workers and day laborers.

Recommendations



Recommendation #1

Eliminate domestic workers from the “employments excluded” in RCW 51.12.020.

- Yes 
- No 



Recommendation #2

Eliminate “persons employed doing gardening, maintenance or repair in, or about a private home...” from the “employments excluded” in RCW 51.12.020 (day laborers)?



- Yes 
- No 

Recommendation #3

Establish a statutory definition of “domestic worker”



- Yes 
- No 

Include “day laborer”, in the definition of “domestic worker”

- Yes 
- No 



Recommendation #4

Include an exemption for “casual labor” in definition of domestic worker/day labor?

- Yes 
- No 



Recommendation #5

Include specific language to address coverage when work reasonably expected as part of the domestic service is performed off premise. For example, going to the grocery store, taking children to the park, or traveling with the families.

- Yes 
- No 

Recommendation #6

To ensure legislative clarity on the scope of the right, include in definition of domestic worker that “any worker who meets the definition is considered a covered worker from the moment they commence work at a private home”.

- Yes 
- No 

Recommendation #7

Ask the legislature to pass a bill to:

- Implement the recommendations above and provide a delayed effective date to allow for continued work.
- Direct L&I to reconvene this work group to focus on addressing barriers that may prevent employers of domestic workers from complying with mandatory workers' compensation coverage.

■ Yes 

■ No 

Recommendation #8

Ask the Legislature to:



- Direct L&I to research establishing a lower rate for workers performing services similar to those of domestic workers who may be determined to be independent contractors, and
- Grant L&I the authority to set lower rates, in recognition of equity principles and challenges in the application of the independent contractor test.

■ Yes 

■ No 



Recommendation #9

Direct L&I as part of the workgroup to research options for workers' compensation retaliation investigations without requiring a complaint to be filed by the worker.

- Yes 
- No 

Recommendation #10

Direct L&I to establish a process for referrals to other L&I Divisions or other agencies, if appropriate, when possible violations of domestic worker rights are identified.

- Yes 
- No 

Retaliations

Workers' Compensation Retaliation

RCW 51.48.025

- (1) No employer may discharge or in any manner discriminate against any employee because such employee has filed or communicated to the employer an intent to file a claim for compensation or exercises any rights provided under this title. However, nothing in this section prevents an employer from taking any action against a worker for other reasons including, but not limited to, the worker's failure to observe health or safety standards adopted by the employer, or the frequency or nature of the worker's job-related accidents.
- (2) Any employee who believes that he or she has been discharged or otherwise discriminated against by an employer in violation of this section may file a complaint with the director alleging discrimination within ninety days of the date of the alleged violation. Upon receipt of such complaint, the director shall cause an investigation to be made as the director deems appropriate. Within ninety days of the receipt of a complaint filed under this section, the director shall notify the complainant of his or her determination. If upon such investigation, it is determined that this section has been violated, the director shall bring an action in the superior court of the county in which the violation is alleged to have occurred.
- (3) If the director determines that this section has not been violated, the employee may institute the action on his or her own behalf.
- (4) In any action brought under this section, the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and to order all appropriate relief including rehiring or reinstatement of the employee with back pay.

Workers' Compensation Claim Suppression

RCW 51.28.010

- (3) Employers shall not engage in claim suppression.
- (4) For the purposes of this section, "claim suppression" means intentionally:
 - (a) Inducing employees to fail to report injuries;
 - (b) Inducing employees to treat injuries in the course of employment as off-the-job injuries; or
 - (c) Acting otherwise to suppress legitimate industrial insurance claims.
- (5) In determining whether an employer has engaged in claim suppression, the department shall consider the employer's history of compliance with industrial insurance reporting requirements, and whether the employer has discouraged employees from reporting injuries or filing claims. The department has the burden of proving claim suppression by a preponderance of the evidence.
- (6) Claim suppression does not include bona fide workplace safety and accident prevention programs or an employer's provision at the worksite of first aid as defined by the department.

Workers' Compensation Claim Suppression

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RCW 51.28.025

- (4) The director, or the director's designee, shall investigate reports or complaints that an employer has engaged in claim suppression as prohibited in RCW 51.28.010(3). The complaints or allegations must be received in writing, and must include the name or names of the individuals or organizations submitting the complaint. In cases where the department can show probable cause, the director may subpoena records from the employer, medical providers, and any other entity that the director believes may have relevant information. The director's investigative and subpoena authority in this subsection is limited solely to investigations into allegations of claim suppression or where the director has probable cause that claim suppression might have occurred.
- (5) If the director determines that an employer has engaged in claim suppression and, as a result, the worker has not filed a claim for industrial insurance benefits as prescribed by law, then the director in his or her sole discretion may waive the time limits for filing a claim provided in RCW 51.28.050 if the complaint or allegation of claim suppression is received within two years of the worker's accident or exposure. For the director to exercise this discretion, the claim must be filed with the department within ninety days of the date the determination of claim suppression is issued.
- (6) For the purposes of this section, "claim suppression" has the same meaning as in RCW 51.28.010(4).

Definitions

Current Law

RCW 51.12.020

- (1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed 40 or more hours a week in such employment.
- (2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, “maintenance” means the work of keeping in proper condition, “repair” means to restore to sound condition after damage, and “private home” means a person’s place of residence.

Definition of Domestic Worker

- **L&I Policy:** *A domestic worker is defined as an individual who is privately employed to perform duties in or about a private home for the immediate member(s) of a family, includes employees performing general household duties, such as maids, cooks, butlers, housekeepers, nannies, gardeners, and caretakers.*
- **Seattle Ordinance:**** Domestic worker means any worker who provides domestic services to an individual or household in or about a private home as a nanny, house cleaner, home care worker, gardener, cook, or household manager...*

*

Seattle Ordinance covers wages, meal and rest breaks, scheduling/rest days, and retention of original worker documents/personal effects.

Potential Definitions – Combined

- *Domestic worker means any worker:*
 - *Employed to provide domestic services or perform maintenance or repair in or about the private home of the employer. This does not include domestic services or maintenance or repair performed on a casual basis.*
 - “Domestic services” means duties including *nanny(childcare?), house cleaning, home care worker (caregiving?), gardening, or cooking.*
 - “Maintenance” means the work of keeping in proper condition, “repair” means to restore to sound condition after damage.
 - “Private home” mean a person’s place of residence, includes work done off premise where performed as part of the domestic service/integral to the duties.
 - “Casual labor” means.....
 - Work done off premise
 - *Any worker who meets the definition of a domestic worker is considered a covered worker from the moment they commence work at a private home.*

Potential Definition

Casual Labor – Seattle Ordinance

*“Casual labor” means work that is: 1) irregular, uncertain, or incidental in nature and duration, **and** 2) different in nature from the type of paid work in which the worker is customarily engaged in. Whether a worker is working on a casual basis depends on a totality of circumstances”*

Seattle Ordinance – Clarification in rule

- **Irregular, uncertain, or incidental.** The irregular, uncertain, or incidental nature of the work will be determined on a case-by-case basis by looking at the scope, duration, and continuity of work engaged by the worker.
- **Customarily Engaged in Domestic Work – Presumption.** It shall be presumed that a worker is “customarily engaged” in the type of domestic work for which they are being paid, unless the worker voluntarily discloses otherwise to a hiring entity. A voluntary disclosure means that the worker has not been pressured, manipulated, or coerced into asserting that their work is different in nature from the type of paid work in which they are customarily engaged.

Session Recap

- Identify decisions, action items.
- Capture “parking lot” items for future sessions.
- Confirm next steps.

Questions?

Future agenda items?

Additional Resources

L&I legislative website

- <https://lni.wa.gov/agency/legislature>
- Domestic Workers Workgroup* DWW schedule (2021/2022)
 - Meeting materials
 - Agendas with log-on information

L&I point of contact

- Email questions/comments to Cheryl Mills at cheryl.mills@lni.wa.gov

*Under Workgroup tab on right of website.

thank you!

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Casual Labor

- Seattle Ordinance Definition of “Domestic Worker” does not include any individual who is:
 - Working on a casual basis.
 - Casual refers to work that is:
 - 1) irregular, uncertain, or incidental in nature and duration, and
 - 2) different in nature from the type of paid work in which the worker is customarily engaged in.
- WA Minimum Wage Act does not apply to any individual “employed in casual labor in or about a private home”
 - Determined based on the scope, duration and continuity of employment

Casual Labor

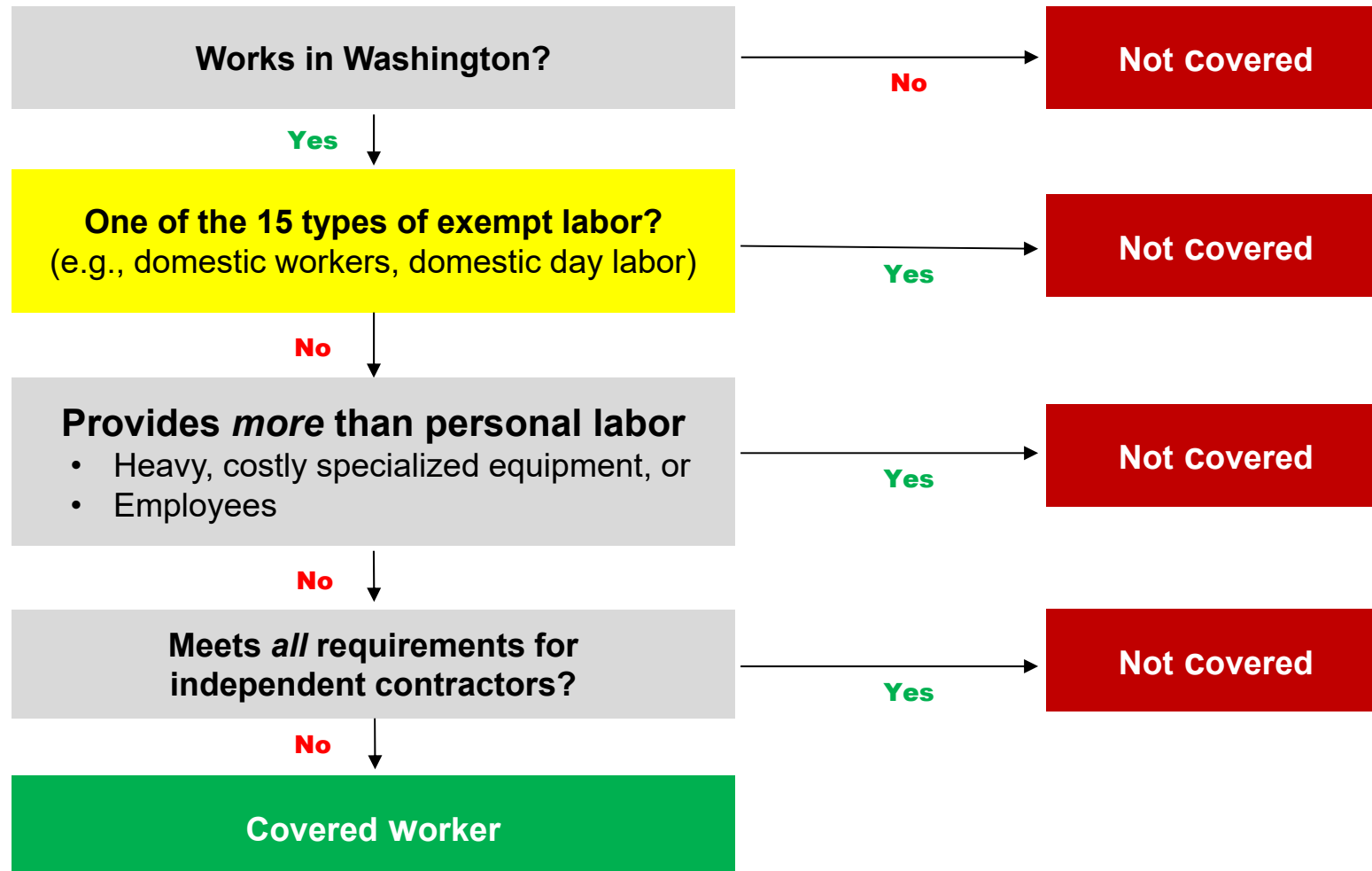
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Scenarios: Who is a covered worker?

Scenario	Coverage requirements/options
1. If homeowner hires a business to provide domestic or household workers...	Business (not homeowner) must provide workers' comp coverage for the workers.
2. If a domestic worker operates as a business owner...	Worker <i>may elect</i> to purchase coverage for self, but <i>must</i> cover any employees.
3. If a homeowner directly hires domestic help (fewer than 2 full-time)...	Homeowner is not required to provide workers' comp coverage, but may elect to do so. The worker cannot choose to cover him/herself.

Independent Contractor Test

Which workers covered by workers' comp?



DW Relevant Statutes

- Personal Labor Test
 - RCW 51.08.180
- Employment Security Department
 - RCW 50.04.160

Personal Labor Test – RCW 51.08.180

"Worker" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment, or as an exception to the definition of worker, a person is not a worker if he or she meets the tests set forth in subsections (1) through (6) of RCW 51.08.195 or the separate tests set forth in RCW 51.08.181 for work performed that requires registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW: PROVIDED, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier.

Independent-Contractor tests

Must meet all 6 (or 7) provisions

1. Free from control or direction by the hiring entity.
2. Contractor's business must be separate and different from the hiring entity's.
3. The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.
4. Responsible for filing schedule of expenses with IRS tax returns.
5. Properly registered/licensed with state agencies (e.g., DOR).
6. Maintains separate income/expense records for the business.
7. ***For construction contractors only:*** Possesses valid contractor registration or electrical contractor license.

Workgroup members

10-member work group, appointed by governor

Worker Representatives	Employer Representatives
Directly affected domestic workers (2) <ul style="list-style-type: none">• Silvia Gonzalez• Kasey Bowen	Employers of domestic workers (2) <ul style="list-style-type: none">• Puja Dhawan, Care for All with Respect & Equity• TBD
Directly affected day laborers (2) <ul style="list-style-type: none">• Fred DuBon• TBD	Employer of domestic day laborers (1) <ul style="list-style-type: none">• TBD
Unions/worker centers (2) <ul style="list-style-type: none">• Tina Sigurdson, SEIU 775• Joe Kendo, WA State Labor Council	Nonprofit that works with employers (1) <ul style="list-style-type: none">• Dana Barnett, Hand in Hand

Report & recommendations by November 4, 2022

Approved schedule & meeting details

2021	
July 27	10 AM–Noon
September 28	10 AM–Noon
November 30	10 AM–Noon
2022	
January 25	10 AM–Noon
March 29	10 AM–Noon
May 24	10 AM–Noon
July 26	10 AM–Noon
September 27	10 AM–Noon

- Workgroup sessions held via Zoom.
- Log-on information for can be found in the agenda for each meeting as posted on the L&I legislative website.
- Approved by DWW members in August 2021.

Process for Report & Recommendations

- Capture materials, as presented to the work group.
- L&I staff to draft.
- Reviewed by workgroup members.
- Timeline for review TBD.
- Submit to legislature by Nov 4, 2022.
- If there are recommendations L&I can implement, department will take into consideration.